ORIGINAL

Supreme Court, U.S.
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No. 02-571 (4)

IN THE
SUPREME COURT OF THE UNITED STATES

EBONY PATTERSON, *et al.*,

Petitioners,

v.

JENNIFER GRATZ AND PATRICK HAMACHER,

Respondents,

and

LEE BOLLINGER, JAMES J. DUDERSTADT, AND
THE BOARD OF REGENTS OF THE UNIVERSITY OF MICHIGAN,

Respondents.

On Petition for a Writ of Certiorari Before Judgment to the United States Court of Appeals for the Sixth Circuit

RESPONSE TO MOTION TO ADVANCE

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Respondents, the Board of Regents of the University of Michigan, Lee Bollinger, and James J. Duderstadt hereby respond to Petitioners' motion to advance this Court's consideration of the above-captioned petition.

Prior to the filing of the petition in *Patterson*, two other related petitions were otherwise pending before this Court, *Grutter v. Bollinger*, No. 02-241, and *Gratz v. Bollinger*, No. 02-516. Each of those petitions presents the question whether a public university has a compelling interest in achieving the educational benefits of diversity that can justify the consideration of race as one of many factors in admissions decisions. The *Grutter* case arises out of a challenge to the admissions program of the University of Michigan Law School, while the *Gratz* case arises from a challenge to the admissions program of the University of Michigan's College of Literature, Science and the Arts – the University's largest undergraduate college. The two lawsuits from which these petitions arise have proceeded on parallel tracks in the district court and the court of appeals.

The response to the *Grutter* petition is due on October 29, 2002. Respondents understand, based on publicly-available information provided by the Clerk's Office, that the petition will be scheduled to be conferenced on November 27, 2002. The response to the *Gratz* petition is due on Monday November 4, 2002. Respondents further understand that so long as any response in *Gratz* is filed on or before Friday November 1, 2002, the two cases may be considered, as companion cases, in the same conference. Respondents therefore intend to file their response in *Gratz*, along with their response in *Grutter*, on October 29, 2002.

Respondents support Petitioners' motion to shorten the time for response because we believe that it is appropriate for the Court to consider all three petitions at the same

conference. It appears that this objective can only be accomplished, however, by requiring responses to the *Patterson* petition to be filed no later than November 1, 2002. (The date requested by the *Patterson* petitioners, Saturday November 2, 2002, would permit a timely response to be filed on Monday November 4, 2002 – in which case the petition would not be conferenced until December 6, 2002.) Accordinlgy, Respondents request that November 1, 2002 be set as the due date for any response to the *Patterson* petition.

Respondents note, however, that the question presented in the *Patterson* petition – *i.e.*, whether the University of Michigan's admissions policies can be justified as a remedy for the lingering present effects of alleged past discrimination – although arising out of the *Gratz* case, is analytically distinct from the common questions presented in the petitions in *Gratz* and *Grutter* – *i.e.*, whether public universities may consider race in admissions decisions in order to achieve the educational benefits that flow from a diverse student body. Accordingly, if this Court were not to grant the Motion to Advance, it should nevertheless consider the existing *Gratz* and *Grutter* petitions together as companion cases, at its conference scheduled for November 27, 2002. In that event, the Court could independently act on the separate question presented in *Patterson* when it is fully briefed in the ordinary course.

Respectfully submitted,

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